



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2016-0285; FRL-9953-83-Region 1]

#### Air Plan Approval; NH; Rules for Reducing Particulate Emissions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire on March 31, 2011 and on July 23, 2013. These SIP revisions establish particulate matter (PM) and visible emissions (VE) standards for the following sources: foundries, smelters, and investment casting operations; hot mix asphalt plants; and sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. In addition, EPA is approving a part of a SIP revision submitted by New Hampshire on March 12, 2003 that establishes procedures for testing opacity of emissions (i.e., VE). This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2016-0285. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Environmental Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1684; [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Final Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

## **I. Background and Purpose**

On August 22, 2016 (81 FR 56556), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire.

The NPR proposed approval of State Implementation Plan (SIP) revisions submitted by the State of New Hampshire on March 31, 2011 and July 23, 2013. The NPR also proposed approval of a part of a SIP revision submitted by the state on March 12, 2003. The March 2011 submittal included a regulation entitled “Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources” (New Hampshire Code of Administrative Rules Chapter (Env-A 2800)). The July 2013 submittal included the following three regulations: “Particulate Matter and Visible Emissions Standards” (Env-A 2100); “Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations” (Env-A 2400); and “Hot Mix Asphalt Plants” (Env-A 2700).

The four submitted regulations (Env-A 2100, 2400, 2700, and 2800) state that opacity shall be determined in accordance with test methods established in Env-A 807. Therefore, the NPR also proposed to approve Env-A 807, which was part of a SIP revision submitted by New Hampshire on March 12, 2003.

Two of the submitted regulations (Env-A 2100 and 2400) included affirmative defense provisions for malfunction, which is defined as a sudden and unavoidable breakdown of process or control equipment. The New Hampshire regulations were submitted to EPA after EPA issued a start-up, shut-down, and malfunction (SSM) SIP Call proposal in February 2013 (78 FR 12460), which would have allowed narrowly drawn affirmative defense provisions in SIPs for malfunction. However, following issuance of our SSM SIP Call proposal in February 2013 (78 FR 12460), a federal court ruled that the Clean Air Act precludes authority of the EPA to create affirmative defense provisions. On April 13, 2016, New Hampshire Department of Environmental Services (NH DES) sent a letter to EPA withdrawing the affirmative defense

provisions in Chapter Env-A 2100 and 2400 (i.e., 2103.03, and 2405). Therefore, EPA is approving all of the SIP revisions without the withdrawn portions.

Rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

## **II. Final Action**

EPA is approving, and incorporating into the New Hampshire SIP, four regulations and part of one regulation, except for affirmative defense provisions in two of the regulations which NH DES has withdrawn. The four regulations include one regulation submitted by the State of New Hampshire on March 31, 2011, Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources (Env-A 2800), effective October 1, 2010; and three regulations submitted on July 23, 2013, Particulate Matter and Visible Emissions Standards (Env-A 2100), effective April 23, 2013; Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations (Env-A 2400), effective April 23, 2013; and Hot Mix Asphalt Plants (Env-A 2700), effective February 16, 2013. As noted earlier, the affirmative defense provisions, which NH DES has withdrawn from its SIP submittals, are not included in this approval action and are contained in state law only in Env-A 2103.03 and 2405. EPA is also approving and incorporating into the New Hampshire's SIP, New Hampshire's Env-A 807 ("Testing for Opacity of Emissions"), effective October 31, 2002.

## **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the New Hampshire Code of Administrative Rules described in the amendments to

40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <http://www.regulations.gov>.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 27, 2016.

Michael Kenyon,  
Acting Regional Administrator,  
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart EE – New Hampshire**

2. In § 52.1520, the table in paragraph (c) is amended by adding five entries for state citation “Env-A 807”, “Env-A 2100”, “Env-A 2400”, “Env-A 2700”, and “Env-A 2800” in alphanumeric order to read as follows:

**§ 52.1520 Identification of plan.**

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(c) \* \* \*

**EPA-APPROVED NEW HAMPSHIRE REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date <sup>1</sup>	Explanations
**	*	*	*	**
Env-A 807	Testing and Monitoring Procedures	October 31, 2002	[Insert date of publication date in the Federal Register]  [Insert <u>Federal Register</u> citation]	Approve Part Env-A 807 “Testing for Opacity of Emissions.”
**	*	*	*	**
Env-A 2100	Particulate Matter and Visible Emissions Standards	April 23, 2013	[Insert date of publication date in the Federal Register]  [Insert <u>Federal Register</u> citation]	Approve Chapter Env-A 2100, except Part Env-A 2103.03 “Affirmative Defense to Penalty Action,” which NH DES did not submit for approval.



**	*	*	*	**
Env-A 2400	Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations	April 23, 2013	[Insert date of publication date in the Federal Register]  [Insert <u>Federal Register</u> citation]	Approve Chapter Env-A 2400, except PART Env-A 2405 “Affirmative Defenses for Violations of Visible Emission Standards,” which NH DES did not submit for approval.
Env-A 2700	Hot Mix Asphalt Plants	February 16, 2013	[Insert date of publication date in the Federal Register]  [Insert <u>Federal Register</u> citation]	
**	*	*	*	**
Env-A 2800	Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources	October 1, 2010	[Insert date of publication date in the Federal Register]  [Insert <u>Federal Register</u> citation]	
**	*	*	*	**

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

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[FR Doc. 2016-26598 Filed: 11/4/2016 8:45 am; Publication Date: 11/7/2016]